

BRAINTREE BOARD OF HEALTH

MINUTES

February 13, 2014

IN ATTENDANCE: Dr. Philip Nedelman, Chairman
Dr. Arthur Bregoli, Clerk

ALSO PRESENT: Marybeth McGrath, Director of ML & I
Peter Morin, Town Solicitor

Dr. Nedelman called the meeting to order at 7:00 pm.

APPROVAL OF MINUTES:

Motion By: Dr. Bregoli to approve the meeting minutes of January 23, 2014

Second By: Dr. Nedelman

NEW BUSINESS:

1) Review of Correspondence: Gina Rossano-88 Weston Avenue

Present: Gina Rossano, property owner of 88 Weston Avenue

Ms. McGrath advised the Board that within their packets is the letter the Board members received from Gina Rossano, the property owner of 88 Weston Avenue requesting that the order that was issued by the department dated October 10, 2012 be rescinded from the file because she feels that the order was issued erroneously as she feels the oil tank was not leaking.

Ms. McGrath advised the Board that the Order issued on October 10, 2012 is a public record and is part of the file, and therefore should not be rescinded. It does indicate also that a follow up re-inspection was conducted on November 28, 2012 and there was a new gas system that was put in, so the violation was corrected.

Ms. Rossano advised the Board that this past year and a half has been her year in hell because her house was rented out to what now she knows is a professional tenant, and when she returned from her volunteer work in Thailand a year and a half ago, she wanted to move back into her home and the tenant would not leave. The troubles then began and the tenant started making lots of problems for Ms. Rossano that have cost her thousands and thousands of dollars, as well as hospitalization and on.

Ms. Rossano further advised that one of the issues that the tenant is suing her on is that there was a leak in the oil tank.

Ms. Rossano said to Ms. McGrath that she did not know what Ms. McGrath saw when she came to the home to look, but there was no oil on the ground. She had the oil tank removed. She did exactly as she was asked to do, as she was told to do. The oil tank was inspected by a specialist and there was no leak in the tank. So, she wants that fixed and taken off the record and rescind it, and say there was no leak in the tank. She advised that she is being sued because of it. She advised that is all and it is that simple. Mistakes are made and that is fine, she has no issue with any of that, none whatsoever. It is just that when you know you have made a mistake, fix it and she wants it fixed.

Mr. Morin advised the Board that he has reviewed the full contents of the file that was provided to him. Ms. McGrath is correct that the order is a public record, that the correction of the condition is also a public record. In addition, the correspondence provided by Ms. Rossano saying that there was no leak found is part of the public record, as is the correspondence from Brow Oil saying that there was a leak is part of the public record. He further advised that it is within the Board's discretion what is contained within the public record.

Mr. Morin advised that there are no grounds that there was any arbitrary or capricious action on the part of Ms. McGrath in entering the order, or there was any malfeasance on her part that would require that the record be taken out. In having that order in, whether or not the condition actually existed is consistent with public records law in Massachusetts. Mr. Morin advised that having that order in paints the full picture of what precipitated the interaction between the Board of Health and Ms. Rossano, the actions that were taken subsequent to that order, the actions that Ms. Rossano took to correct it, the actions that Ms. Rossano also took to make a contention that the leak did not exist in the first place, and also the correspondence that the Town received saying that there was in fact a leak. He advised that it makes sense to leave it in so there is a full picture of what went on. He sees no reason why it should be removed. He sees no harm provided to Ms. Rossano.

Ms. Rossano advised that it did provide tremendous harm because she had to take out the tank. Everything worked, there was heat. The tenant claimed Brow Oil was not going to service her anymore because there was a leak in the tank. Ms. Rossano advised that she does not know what kind of a relationship that the tenant had with Brow Oil.

Ms. Rossano advised that she had an oil guy come in who said they would fill the tank. Ms. Rossano stated she told the tenant to call that oil company because they would fill the tank. The heating system works, there is no leak in the tank. Ms. Rossano stated that the tenant would not do it, and insisted to Ms. Rossano that she (the tenant) could not get heat. Ms. Rossano advised that she herself filled the oil tank by hand with ten gallons at a time until the situation was ironed out. Ms. Rossano said she did everything that she could.

Mr. Morin advised that was documented.

Ms. Rossano stated there was no proof that there was a leak in the tank. She addressed Ms. McGrath asking where was Ms. McGrath's proof, as Ms. Rossano stated that she has plenty of proof that there was no leak in the tank. She stated that she wanted to see the proof that there was a leak in the tank, and she stated there was no proof of that. She stated she does not know what the department saw. She didn't see it, and if there was oil on the ground, everyone knows that the fire department should have been involved. She stated that nothing happened, there was no oil anywhere.

Ms. McGrath advised that Ms. Rossano was not present at the initial complaint inspection conducted by the department on October 9, 2012.

Ms. Rossano disagreed, and stated that she was present at this inspection. Further, she stated that Ms. McGrath came for that inspection to the dwelling with another woman, and she (Ms. Rossano) was there when the tank was inspected. She stated that her tenant was not there during the October 9, 2012 inspection, but she was.

Ms. Rossano continued insisting that she was present during the October 9, 2012 inspection and that her tenant was not there, as well as insisting that the tank was not leaking. Also, because of all this that she is being sued, she has had to spend ten thousand dollars for a new heating system when she did not want to do that yet. She thinks the department made a mistake and that's okay, but the order needs to be taken out.

Ms. McGrath advised the Board that Ms. Rossano was not at the original inspection on October 9, 2012. It was conducted with Sean Collins, a male inspector in the department, and I, in the presence of Mrs. O'Donovan, the tenant because she had to allow us permission to enter her home, which she did. Ms. McGrath has proof of that on the "Permission to Enter" paperwork. Ms. McGrath advised that they went down into the basement and observed a leak under the oil tank. Ms. McGrath physically put her hand into the liquid under it and smelled it, and it was oil. That is what precipitated this order. Ms. Rossano was not at that inspection. She was at a future compliance inspection. The order was mailed out on October 10, 2012. Ms. Rossano received that order, and thereafter the Board of Health received a request from her for a hearing. The requested hearing occurred on November 1, 2012, and Ms. Rossano was present.

Ms. McGrath advised that never at any time did she or her inspector claim to be experts in whether oil tanks leak or not. Furthermore, the Board provided Ms. Rossano with several options.

- 1) She could have the tank inspected by an expert to see if it was leaking;
- 2) She could replace the tank;
- 3) She could install the gas system that she intended to do.

Ms. McGrath advised that Ms. Rossano chose to install the new gas system. The Board provided three options to Ms. Rossano, and installation of the new gas system was what she chose to do.

The compliance inspection was conducted on November 28, 2012, and a new gas heating system and hot gas water heater were in and everything was working. Ms. Rossano received a letter indicating the findings of the compliance inspection.

Ms. McGrath advised that the file also contains a letter from Brow Oil. A reputable oil company that has been in Braintree for years, indicating that the oil tank was leaking. Ms. McGrath advised that Brow Oil Company is the expert, not her.

Ms. Rossano disagreed.

Dr. Nedelman advised that at the very least there seems to be a difference of opinion, but he said there is no reason why the public record should not stand as is. This is the recommendation of the Town Solicitor, and the Board will support that.

Dr. Nedelman asked if this would require a vote.

Mr. Morin advised that there is no action being taken, so no.

Dr. Nedelman asked if this resolves the issue as far as the Board is concerned.

Mr. Morin advised that there is no issue before the Board at this time. Corrective action was taken regarding the order that was given. Ms. Rossano's disagreement with the basis of the order is well documented within the file. It is a fair accounting of both sides of what has been argued. There is nothing further that the Board needs to do with this.

Dr. Nedelman asked if this is the last time that the Board should hear anything to do with this case.

Ms. McGrath advised with regard to the letter of January 20, 2014, yes.

Mr. Morin agreed that there is no action needed to be taken because she is in compliance with the law at this point.

Ms. Rossano advised that she felt she had not said everything that she wanted to say.

Dr. Nedelman provided Ms. Rossano the opportunity to speak further.

Ms. Rossano advised that she did not think that she had three choices. She stated that you cannot take the oil tank out. You cannot prove that the oil tank is so damaged without taking it out. It is the only way to inspect an old oil tank. People are not going to approach it. They do not want to be liable. The only choice was to take the oil tank out once it was declared by the Town that it had a leak in it. There was no other choice. She further advised that her choice was does she put another oil tank in or replace the heating system. That is her choice. But she was not given a choice when to do any of that. Ms. Rossano stated she still thinks that she has much more proof than Ms. McGrath that there was no leak on the floor of that oil tank. There was a mistake made.

Ms. Rossano continued to speak about what measures the tenant took with this and other issues, and that she has proven the tenant a liar on everything.

Ms. Rossano again reiterated that a mistake was made and there was no oil on the ground. She wants some support and for people to be honest. She feels she is being wronged and it is unfair and she is really unhappy. She advised it would be an easy thing to do to take that citation off.

Ms. Rossano requested that she would like the Board's decision in writing, including that there is no action and to know why there was no action taken and what the proof was for them to take no action. She said this is her reputation and she is a member of the town. She does not want it to be said that she was in the wrong, and it is being said she was in the wrong and she wasn't.

Ms. McGrath advised that she would work with Mr. Morin to prepare a letter on behalf of the Board to Ms. Rossano regarding the Board's decision.

Motion By:	Dr. Bregoli to adjourn the meeting at 7:21 pm.
Second By:	Dr. Nedelman